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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re J.E., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

D.E.,

Defendant and Appellant.

D055746

(Super. Ct. No. J509630E)

APPEAL from a judgment of the Superior Court of San Diego County, Garry G.
Haehnle, Judge. Affirmed.

D.E. appeals the judgment terminating her parental rights over J.E. D.E. contends
the juvenile court erred by denying her attorney's request to continue the Welfare and

Institutions Code¹ section 366.26 hearing to allow D.E. to be present and testify. We affirm.

BACKGROUND

Before the inception of this case, D.E.'s mental illness and substance abuse caused her to lose custody of J.E.'s four older siblings. At birth J.E. was detained in the hospital and in a foster home, then returned to D.E.'s care after a few days. In November 2008 the San Diego County Health and Human Services Agency (the Agency) filed a dependency petition for six-month-old J.E. The petition alleged D.E. was hospitalized on a section 5150 hold after she was found dancing and praying in the street, she left the hospital against medical advice and she failed to take prescribed medications and follow up with outpatient psychiatric care. J.E. was detained in Polinsky Children's Center and in a foster home. In December she was moved to a new foster home where she remains.

In January 2009 the court entered true findings on the petition. In March the court ordered J.E. placed in foster care, denied reunification services and set a section 366.26 hearing for July 8. D.E. was served with notice of the July 8 hearing.

D.E. did not appear on July 8, 2009. The court made a notice finding and set a contested section 366.26 hearing for August 6. On August 6 J.E.'s counsel was unavailable and D.E. was ill and had to leave the courtroom. The court made a notice finding and continued the hearing to August 7. D.E.'s counsel assured the court he would make sure D.E. was present. On August 7 D.E.'s counsel informed the court D.E. was ill.

¹ All further statutory references are to the Welfare and Institutions Code.

Counsel requested a continuance so D.E. could be present. Over the Agency's objection, the court continued the hearing to August 11 at 10:00 a.m. By 11:10 a.m. on August 11 D.E. had not appeared. Her counsel requested a continuance. He said, "I had brief contact with [D.E.] this morning. [D.E.] indicated she would be trying to be present this morning." The court denied the continuance request, stated it had previously made a notice finding and proceeded with the section 366.26 hearing.

DISCUSSION

Continuances are discouraged in dependency cases. (*In re Elijah V.* (2005) 127 Cal.App.4th 576, 585.) "[N]o continuance shall be granted that is contrary to the interest of the minor. In considering the minor's interests, the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements. [¶] Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary" (§ 352, subd. (a).) We review the denial of a continuance for abuse of discretion. (*In re Elijah V., supra*, at p. 585.)

D.E. asserts she was unable to present her case on August 6, 2009, the date originally set for the contested hearing, because J.E.'s counsel was unavailable. Counsel's unavailability was not the only reason the hearing was continued from that date, however. On August 6 D.E. left the courtroom because she was ill. Thus, she would not have been present even if J.E.'s counsel had been there.

D.E. argues a short continuance, of fewer than 30 days from August 11, 2009, would have made "little to no difference" to J.E.'s permanency planning because she was placed with a prospective adoptive family. This argument is unavailing. In the juvenile court, D.E.'s counsel did not specify the length of the continuance he requested or show that any particular "period of time [was] necessary." (§ 352, subd. (a).) More than one month had elapsed since the date originally set for the section 366.26 hearing. The hearing had been continued twice, at least in part to accommodate D.E., and she chose not to appear on August 11. J.E. was more than one year old and had already experienced five placements. She was entitled to a prompt resolution of her custody status and to a permanent placement. (*In re Ninfa S.* (1998) 62 Cal.App.4th 808, 811.)

Finally, D.E. contends she was prejudiced because she was prohibited from fully presenting her case for application of the beneficial relationship exception to termination of parental rights (§ 366.26, subd. (c)(1)(B)(i)). This contention fails. Although D.E. now argues she should have been given the opportunity to testify, on August 7, 2009, her attorney said, "[I]t was not our intent to call [D.E.] as a witness and I did have that discussion with her." On August 11 D.E.'s counsel cross-examined the social worker regarding the beneficial relationship exception, urged the court to apply the exception and alternatively asked the court to continue the matter for further assessment. The court found the exception was inapplicable. D.E.'s presence would not have produced a different result.

D.E. has not met her burden of showing the court abused its discretion by denying her attorney's continuance request.

DISPOSITION

The judgment is affirmed.

NARES, J.

WE CONCUR:

McCONNELL, P. J.

BENKE, J.